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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation;
 ORACLE AMERICA, INC., a Delaware
 corporation; and ORACLE INTERNATIONAL
 CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;
 AND SETH RAVIN, an individual,

Defendants.

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Case No. 2:10-cv-0106-LRH-PAL

**ORACLE'S OPPOSITION TO
 RIMINI STREET'S AND SETH
 RAVIN'S MOTION TO ADMIT DTX
 152, DTX 153, DTX 154B, DTX 164A,
 DTX 340 AND DTX 345 WITHOUT
 REDACTIONS**

PUBLIC REDACTED VERSION

1 Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation
 2 (collectively, “Oracle”) submit this opposition to Defendants’ (“Rimini’s”) motion to admit DTX
 3 152, DTX 153, DTX 154B, DTX 164A, DTX 340 and DTX 345 without redactions.

4 **I. BACKGROUND**

5 Oracle has produced numerous documents in this matter that contain statements from
 6 Oracle’s customers. Some of those customers left Oracle for Rimini, but many others did not
 7 and are irrelevant to this case. Rimini included many of these documents on its exhibit list, and
 8 Oracle moved *in limine* to exclude the inadmissible hearsay in these documents. Dkt. 648 at
 9 12:24-16:2. The Court denied the motion “without prejudice,” stating that the exhibits “should
 10 be addressed on a case-by-case basis at trial.” The Court stated that “[a]t this point, the only
 11 generalized ruling” it could make was “any *direct quoted* statements from customers that are
 12 being used to prove the truth of the matter asserted . . . are inadmissible hearsay and shall be
 13 excluded,” and that “statements by Oracle employees that *constitute analysis of the customer*
 14 *relationship*, which may or may not be based on information the employee receives from the
 15 customer, *may* be admissible if the statements constitute employee party admissions or present-
 16 sense impressions.” Dkt. 723 at 6:11-24 (emphasis added). The Court did not make any
 17 determinations as to whether any specific statements fall into the former, *inadmissible* category
 18 (“direct quoted statements from customers”) or the latter, *admissible* category (“analysis of the
 19 customer relationship”). The Court also did not address the large in-between category, where an
 20 Oracle employee simply paraphrases information provided by a customer but does not provide
 21 any analysis of the customer relationship. Rather, the Court stated that it would make those
 22 determinations “at trial when the court is more familiar with the statements and the context for
 23 which they are being offered.” *Id.* at 6:22-24.

24 Rimini now seeks to admit various documents that contain quoted or paraphrased
 25 statements from Oracle’s customers – whether or not they are relevant to this case, including
 26 many statements by customers that did *not* go to Rimini – often including negative statements
 27 about Oracle support. Not only do these documents contain customer hearsay in the form of
 28 statements from customers falling in the category of statements the Court has ruled inadmissible,

1 but much of that hearsay is also irrelevant and unduly prejudicial because it relates to customers
 2 that are not even at issue in this case because they did not leave Oracle for Rimini Street or
 3 because they were not licensees of the relevant Oracle products. Further, at this point in the trial
 4 when all of Oracle's employee witnesses have been questioned and only Oracle's damages
 5 experts remain, Rimini cannot establish a foundation for these documents or in any way establish
 6 that they are relevant to this case. Therefore, consistent with the Court's ruling, Oracle has
 7 proposed redactions to these exhibits to eliminate the inadmissible hearsay and irrelevant and
 8 unduly prejudicial customer statements.

9 In order to resolve this dispute, the parties have agreed to limit their discussion to a
 10 subset of Oracle's proposed redactions in six of the documents that Rimini seeks to admit.
 11 Based on the Court's rulings on these exemplar proposed redactions, the parties can then
 12 extrapolate to any other of Oracle's proposed redactions to these documents that Rimini seeks to
 13 admit.

14 II. DISCUSSION

15 Rimini's motion to admit these exhibits without redactions should be denied for three
 16 reasons. *First*, the customer comments are unreliable hearsay that Rimini seeks to admit for the
 17 truth of the matters asserted. The documents that Rimini seeks to admit are largely [REDACTED]

18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED] Dkt. 647-1 (Ransom
 22 Dep.) at 71:4-17. Oracle had no way of verifying the customer statements' accuracy. [REDACTED]

23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]

28 The customer statements at issue in these documents are classic examples of unreliable

1 customer complaints, and the Court should exclude them from evidence. *See Rowland v. Am.*
2 *Gen. Fin.*, 340 F.3d 187, 194-95 (4th Cir. 2003) (customer complaint inadmissible as double
3 hearsay, even when contained within official records that came within a hearsay exception).

4 In selecting the customer statements for proposed redaction, Oracle has taken care to
5 follow the Court's guidance on Oracle's motion *in limine* regarding customer hearsay and only
6 proposed redactions for statements that came directly from customers and not statements that
7 consist of Oracle's analysis of the customer relationship. The hearsay issues relevant to the
8 exemplar statements are discussed in detail below.

9 **Second**, for many of the proposed redactions, the customer statements are irrelevant and
10 unduly prejudicial because the negative statements relate to non-Rimini customers or to
11 customers on products that are not at issue in this case. For example, in one of the exemplars,
12 Column M, Row 77 of DTX 154B, the customer at issue is [REDACTED], which is
13 not a relevant customer in this case. *See* Dkt. 523 at 8:23-17:23. In another example, page 2 of
14 DTX 340 contains a statement by customer [REDACTED] concerning why it dropped
15 support "[REDACTED]." Hixson Decl., Ex. E. Rimini quotes this statement
16 prominently in its brief (Motion at 3), but not only is True Value Company not a Rimini
17 customer, Oracle's Retail software is not a product line at issue in this case. Between them,
18 DTX 154B and 171B contain literally hundreds of hearsay statements by customers that did not
19 go to Rimini and have nothing to do with this lawsuit. Rimini is trying to admit huge piles of
20 obviously irrelevant hearsay purely for its prejudicial effect.

21 **Third**, Rimini has failed to establish a foundation for the statements at issue in these
22 documents. At this point in the trial, Oracle's only remaining witnesses are its damages experts.
23 Rimini has failed to introduce these documents with an Oracle decision-maker to establish
24 relevance or foundation. Right now they are just unexplained spreadsheets or PowerPoints with
25 no foundational testimony to show how they were created, who received them, or how they were
26 used. Rimini argues in its motion that the customer statements at issue are not really statements
27 by the customers but analysis by Oracle employees of the customer relationship, but there is no
28 evidence at trial or otherwise to establish that this is actually true. Admission of these

documents without Oracle's proposed redactions would introduce unreliable hearsay that is irrelevant and unduly prejudicial and lacks sufficient foundation.

III. EXEMPLARS

A. DTX 152 (Hixson Decl., Ex. A)

DTX 152 is a [REDACTED]

[REDACTED] The parties propose that the Court rule on the following redactions proposed by Oracle for DTX 152 (the text that Oracle proposes to redact is highlighted in Ex. A):

Column AH, Row 4 (p.4)

Excerpted Text (proposed redacted text in bold italics): "[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]"

Argument: [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] The repeated statements "they believe" and "they feel" indicate that the Oracle employee is recording the statements of others. The quoted text merely reports hearsay and contains no analysis of the customer relationship by Oracle, and therefore it is not a party admission or a present sense impression.

Column AH, Row 10 (p.4)

Excerpted Text (proposed redacted text in bold italics): "[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]"

Argument: [REDACTED]

[REDACTED] Why that company left Oracle support has no relevance

1 at all to this case. Further, Oracle proposes to redact the bolded text in this cell because it is
 2 paraphrased statements directly from the customer made at a meeting with the customer's
 3 controller. [REDACTED]

4 [REDACTED] These statements are preceded and
 5 followed by what is arguably an analysis of the customer relationship, but the material in the
 6 proposed redactions merely reports hearsay.

7 **Column AH, Row 15 (p.4)**

8 **Excerpted Text (proposed redacted text in bold italics):** "[REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]"

13 **Argument:** The text in this cell is paraphrased statements directly from the customer apparently
 14 made at a meeting with the customer on 12/21/2005. The proposed redacted text contains
 15 information that Oracle could only have heard from the customer, such as what the customer
 16 "wants." Therefore, the proposed redactions are inadmissible hearsay.

17 **Column AH, Row 18 (p.4)**

18 **Excerpted Text (proposed redacted text in bold italics):** "[REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]"

28

Argument: The bolded text in this cell is paraphrased statements directly from the customer. The proposed redacted text contains information that Oracle could only have heard from the customer, such as what the customer plans to do and what “they are basically telling us.” The proposed redactions are inadmissible hearsay.

B. DTX 153 (Hixson Decl., Ex. B)

DTX 153 is a slide presentation that appears to be a training deck for the Oracle sales organization. The first few pages of the slide deck provide guidance on [REDACTED] [REDACTED] Page 25 of the presentation contains an example of an “Executive Summary,” which is a form Oracle sales renewal representatives can fill out to send to management to obtain approval. Page 25 has an example of an Executive Summary for [REDACTED]. The parties propose that the Court rule on the following redaction proposed by Oracle for DTX 153 (the text that Oracle proposes to redact is highlighted at Bates page ORCLRS0175460 of Ex. B):

Excerpted Text (proposed redacted text in bold italics): “ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”

Argument: This text is irrelevant. There is no indication that this example in the training presentation is real. In context, this document is clearly being used for training purposes; the [REDACTED] example could be made up for training purposes. Assuming this example is real, the text in this cell would consist of paraphrased statements directly from the customer. The proposed redacted text reports what the customer “expressed” and what it “suggested.” Therefore, the proposed redactions are inadmissible hearsay.

C. DTX 154B (Hixson Decl., Ex. C)

DTX 154B is a spreadsheet recording data related to communications with customers from the 2005-2006 timeframe. The parties propose that the Court review the following

redactions proposed by Oracle for DTX 154B (the text that Oracle proposes to redact is highlighted in Ex. C):

Column M, Row 6 (Ex. C at 63)

Excerpted Text (proposed redacted text in bold italics): “
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”

Argument: The proposed redacted text in this cell is paraphrased statements directly from the customer. [REDACTED]

[REDACTED] The proposed redacted text merely reports hearsay.

Column M, Row 7 (Ex. C at 63)

Excerpted Text (proposed redacted text in bold italics): “
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”

Argument: The statements are hearsay. The proposed redacted text in this cell is explicitly paraphrased statements directly from the customer. The proposed redacted text begins, “They say,” referring to the customer. The proposed redacted text merely reports hearsay.

Column M, Row 31 (Ex. C at 69)

Excerpted Text (proposed redacted text in bold italics): “
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]”

9 **Argument:** The proposed redacted text in this cell is explicitly paraphrased statements directly
 10 from the customer. The proposed redacted text begins, “They say,” referring to the customer.
 11 Portions of the text are written in the first person, stating views obviously attributable to the
 12 customers (“ [REDACTED]
 13 [REDACTED]”), as if written by the customer itself.

14 **Column M, Row 77 (Ex. C at 76)**

15 **Excerpted Text (proposed redacted text in bold italics):** “ [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]
 28

1 [REDACTED]

2 [REDACTED]”

3 **Argument:** This text is irrelevant because it relates to [REDACTED] (Ex. C at 14),
 4 which is not a Rimini customer. *See* Dkt. 523 at 8:23-17:23. Further, the proposed redacted text
 5 in this cell is explicitly paraphrased or quoted statements directly from the customer. The
 6 proposed redacted directly quotes the customer multiple times, refers to what the customer
 7 requested, communicated, felt, and wanted. The proposed redacted text merely reports hearsay

8 **Column M, Row 78 (Ex. C at 76)**

9 **Excerpted Text (proposed redacted text in bold italics):** “[REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]”

14 **Argument:** This text is irrelevant because the customer at issue – [REDACTED] – (Ex. C at
 15 14) is not a Rimini customer. *See* Dkt. 523 at 8:23-17:23. In addition, the proposed redacted
 16 text in this cell is paraphrased statements directly from the customer. The proposed redaction
 17 describes what the customer “wrote,” and paraphrases the customer’s response to Oracle’s email.

18 **Column M, Row 92 (Ex. C at 77)**

19 **Excerpted Text (proposed redacted text in bold italics):** “[REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]”

23 **Argument:** This text is irrelevant because the customer at issue – [REDACTED] – (Ex. C
 24 at 15) is not a Rimini customer. *See* Dkt. 523 at 8:23-17:23. In addition, the proposed redacted
 25 text in this cell is paraphrased statements directly from the customer. The proposed redaction
 26 describes how the customer felt, conveying statements that only could have come from the
 27 customer.

28 **Column M, Row 129 (Ex. C at 83)**

Excerpted Text (proposed redacted text in bold italics): “

”

Argument: The proposed redacted text in this cell is paraphrased statements directly from the customer. The proposed redactions paraphrase the customer's email and statements made on a phone conversation.

D. DTX 164A (Hixson Decl., Ex. D)

DTX 164A is an email and attached slide presentation that contains summary information about customer cancellations. The parties propose that the Court review the proposed redactions related to [REDACTED] on page ORCLRS0207977 and [REDACTED] highlighted on page ORCLRS0207977 of Ex. D.

Excerpted Text (proposed redacted text in bold italics):

“...[redacted]”

10/10/2014

_____ ,

Argument: [REDACTED] are not Rimini customers, so these entries about them are irrelevant to this case. In addition, the proposed redacted text is paraphrased statements directly from the customer. The proposed redactions

1 paraphrase statements that the customers must have made to Oracle, such as what the customer's
 2 "intention" was, what the customer could "justify," or what the customer "needs" or how the
 3 customer is "uncertain." The proposed redacted text merely reports hearsay.

4 **E. DTX 340 (Hixson Decl., Ex. E)**

5 DTX 340 is an Oracle email containing approval requests. The parties propose that the
 6 Court review the proposed redactions related to [REDACTED] highlighted on page
 7 ORCLRS0703290 of Ex. E.

8 **Excerpted Text (proposed redacted text in bold italics):**

9 "[REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]"

17 **Argument:** This text is irrelevant because [REDACTED] is not a Rimini customer and
 18 Oracle's Retail software is not a product line at issue in this case. In addition, the proposed
 19 redacted text is paraphrased statements directly from the customer explaining why the customer
 20 canceled Oracle support and the customer's related feelings.

21 **F. DTX 345 (Hixson Decl., Ex. F)**

22 DTX 345 is a slide presentation regarding Global Support Cancellations. The parties
 23 propose that the Court review the proposed redactions highlighted at Bates pages
 24 ORCLRS0707449 (Ennis) and ORCLRS0707457 (Sysmex) of Ex. F.

25 **Excerpted Text (proposed redacted text in bold italics):**

26 [REDACTED]: "[REDACTED]
 27 [REDACTED]
 28 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]”
 4 Sysmex: “ [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]”

8 **Argument:** Both of the above entries are irrelevant because neither [REDACTED] are
 9 Rimini customers. *See* Dkt. 523 at 8:23-17:23. They have nothing to do with this case. In
 10 addition, the proposed redacted text is paraphrased statements directly from the customers
 11 explaining why the customers canceled Oracle support and the customer’s related “thoughts,”
 12 “plans,” and “decisions” for its business. The proposed redacted text merely reports hearsay and
 13 contains no analysis of the customer relationship by Oracle, and therefore it is not a party
 14 admission or a present sense impression.

15 **IV. CONCLUSION**

16 For the foregoing reasons, the Court should deny Rimini’s motion and order the
 17 redactions that Oracle has proposed.
 18

19 Dated: September 24, 2015
 20

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